

HOUSE BILL NO. 38

INTRODUCED BY A. OLSON

1
2
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING MISDEMEANOR CRIMINAL PENALTIES AND
5 INCREASING CIVIL PENALTIES FOR LOBBYISTS AND LOBBYIST PRINCIPALS IN NONCOMPLIANCE WITH
6 TIMELY FILING OF REPORTS; PROVIDING FOR A HEARING WHEN A CIVIL PENALTY IS IMPOSED FOR
7 LATE FILING OF REPORTS; EXPANDING THE DUTIES OF THE COMMISSIONER OF POLITICAL
8 PRACTICES REGARDING VIOLATIONS OF LOBBYING LAWS; EXTENDING THE PERIOD TO BRING AN
9 ACTION; AMENDING SECTIONS 5-7-108, 5-7-209, AND 5-7-305, MCA; AND PROVIDING AN IMMEDIATE
10 EFFECTIVE DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 5-7-108, MCA, is amended to read:
15 **"5-7-108. Inspection of applications and reports--issuance of orders of noncompliance -- order**
16 **of noncompliance -- notification.** (1) Each application and report filed with the commissioner must be
17 inspected within 10 days after it is filed. If a person has not satisfied the provisions of this chapter, the
18 commissioner shall immediately notify the person of the noncompliance.

19 (2) An order of noncompliance may be issued when:

20 (a) it is determined that an application or report filed with the commissioner does not conform to the
21 requirements of this chapter; or

22 (b) a person has failed to file an application or report required by law.

23 ~~(2)~~(3) The person notified of noncompliance shall submit the necessary information within 5 days after
24 receiving the notice of noncompliance. ~~Upon failure~~ If the person notified of noncompliance fails to submit the
25 required information within 5 days, the commissioner may initiate a civil or criminal action pursuant to the
26 procedures contained in 5-7-305."

27
28 **NEW SECTION. Section 2. Civil penalties for delays in filing -- option for hearing -- SUSPENSION**
29 **OF PENALTY.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails

1 to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day
2 that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

3 (2) The penalty imposed in subsection (1) is not subject to the procedural requirements of 5-7-305 and
4 must be applied if a person fails to meet the requirements of 5-7-108(3).

5 (3) A person against whom a civil penalty is imposed pursuant to subsection (1) may request, within
6 10 days of receiving a notice of imposition of a civil penalty, a hearing before the commissioner. Upon receipt
7 of a timely request, the commissioner shall hold an informal contested case hearing as provided in Title 2,
8 chapter 4, part 6. UPON THE FILING OF A TIMELY REQUEST FOR A HEARING, THE IMPOSITION OF THE DAILY CIVIL PENALTY
9 PROVIDED FOR IN THIS SECTION MUST BE SUSPENDED UNTIL THE COMMISSIONER ISSUES A DECISION. At the hearing, the
10 commissioner shall consider any factors or circumstances in mitigation and may reduce or waive the civil
11 penalty.

12 (4) All civil penalties imposed pursuant to this section must be deposited in the state general fund.

13

14 **Section 3.** Section 5-7-209, MCA, is amended to read:

15 **"5-7-209. Payments prohibited unless reported -- penalty for late filing, failure to report, or for**
16 **false statement.** A principal may not make payments to influence official action by any public official unless that
17 principal files the reports required under this chapter. A principal who fails to file a required report within the time
18 required by this chapter is subject to the ~~penalty~~ penalties provided in [section 2(1)] and 5-7-305 ~~as well as any~~
19 ~~civil action provided for in that section.~~ A principal who knowingly files a false, erroneous, or incomplete
20 statement commits the offense of unsworn falsification to authorities."
21

22

23 **Section 4.** Section 5-7-305, MCA, is amended to read:

24 **"5-7-305. Penalties and enforcement.** ~~(1) Any person violating the provisions of this chapter shall be~~
25 ~~deemed guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county~~
26 ~~jail not more than 6 months or by a fine not exceeding \$200, or both.~~

27 ~~(2)(1) Any A~~ person who violates any of the provisions of this chapter ~~shall be~~ is subject to civil penalties
28 of not less than \$250 and not more than \$7,500 according to the discretion of the district court, as court of
29 original jurisdiction. A lobbyist who violates any of the provisions of this chapter ~~shall~~ must have ~~his~~ the lobbyist's
license suspended or revoked according to the discretion of the court. Any public official holding elective office

1 adjudged in violation of the provisions of this ~~act~~ chapter is additionally subject to recall under the Montana
 2 Recall Act, ~~2-16-601, et seq.~~ Title 2, chapter 16, part 6, and ~~such the violation shall constitute~~ constitutes an
 3 additional basis for recall to those mentioned in 2-16-603(3).

4 ~~(3)(2)~~ The attorney general, the commissioner, or the county attorney of the county in which the violation
 5 takes place may bring ~~criminal or a civil actions~~ action in the name of the state for any appropriate ~~criminal or~~
 6 civil remedy.

7 ~~(4)(3)~~ If a ~~prosecution~~ civil penalty action is undertaken by the attorney general or the commissioner
 8 ~~or any county attorney~~, all costs associated with the prosecution ~~shall~~ must be paid by the state of Montana.

9 ~~(5)(4)~~ (a) Any individual who has notified ~~the commissioner~~, the attorney general, the commissioner,
 10 and the appropriate county attorney in writing that there is reason to believe that some portion of this chapter
 11 is being violated may ~~himself~~ bring in the name of the state an action (~~hereinafter~~ referred to as a citizen's action)
 12 authorized under this chapter if:

13 (i) the attorney general, the commissioner, or ~~and~~ the appropriate county attorney ~~have~~ has failed to
 14 commence an action ~~hereunder~~ within ~~40~~ 90 days after ~~such~~ notice; and

15 (ii) ~~said attorneys then fail~~ the attorney general, the commissioner, or the county attorney fails to
 16 commence an action within 10 days after receiving a written notice ~~delivered to them advising them~~ that a
 17 citizen's action will be brought if ~~they do~~ the attorney general, the commissioner, or the county attorney does not
 18 bring an action.

19 (b) Each notification ~~shall toll~~ tolls the applicable statute of limitations ~~applicable~~
 20 the waiting period.

21 (c) If the individual who brings the citizen's action prevails, ~~he shall be~~ the individual is entitled to be
 22 reimbursed by the state of Montana for costs and ~~attorney's~~ attorney fees incurred; ~~provided that~~ However, in
 23 the case of a citizen's action ~~which that~~ is dismissed and ~~which that~~ the court also finds was brought without
 24 reasonable cause, the court may order the individual commencing the action to pay all costs of trial and
 25 reasonable ~~attorney's~~ attorney fees incurred by the defendant.

26 ~~(6)(5)~~ ~~No~~ A civil action may not be brought under this section more than 3 years after the occurrence
 27 of the facts ~~which that~~ give rise to the action.

28 ~~(7)(6)~~ All civil penalties imposed pursuant to this section ~~shall~~ must be deposited in the state general
 29 fund.

1 ~~(8)(7)~~ A hearing under this chapter ~~shall~~ must be held by the court unless the defendant-licensee
2 demands a jury trial. The trial ~~shall~~ must be held as soon as possible but at least 20 days after the filing of the
3 charges and ~~shall~~ must take precedence over all other matters pending before the court.

4 ~~(9)(8)~~ If the court finds for the plaintiff, judgment ~~shall~~ must be rendered revoking or suspending the
5 license and the clerk of court shall file a certified copy of the judgment with the commissioner."
6

7 NEW SECTION. **Section 5. Codification instruction.** [Section 2] is intended to be codified as an
8 integral part of Title 5, chapter 7, and the provisions of Title 5, chapter 7, apply to [section 2].
9

10 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.
11

- END -